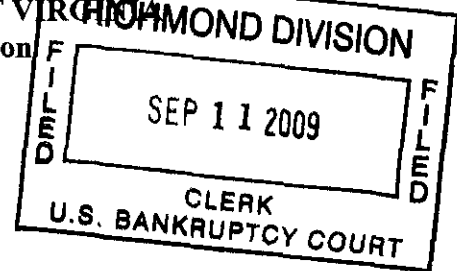


UNITED STATES BANKRUPTCY COURT FOR
EASTERN DISTRICT OF VIRGINIA
Richmond Division



In re:

CIRCUIT CITY STORES, INC.

Chapter 11

CASE NO. 08-35653-KRH

Debtor.

**CREDITOR JONATHAN CARD'S RESPONSE TO DEBTORS' THIRTY-FIRST
OMNIBUS OBJECTION TO CLAIMS [DISALLOWANCE OF CERTAIN LEGAL
CLAIMS]**

COMES NOW, Creditor Jonathan Card, through his undersigned counsel, pursuant to Fed. R. Bankr. P. 3007, Local Bankruptcy Rule 3007-1(D), and this Court's April 1, 2009 Order Establishing Omnibus Objection Procedures and Approving the Form and Manner of Notice of Omnibus Objections [Docket No. 2881], and responds to the Debtors' Thirty-First Objection to Claims [Disallowance of Certain Legal Claims] [Docket No. 4585] and states as follows:

Argument

1. The Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code on November 10, 2008 and continue to manage their affairs as debtors-in-possession.
2. On August 29, 2002, Creditor Jonathan Card filed his lawsuit on behalf of himself and all other assistant managers employed by Debtors seeking overtime compensation, compensation for missed meal and rest breaks, waiting time penalties and attorneys' fees under California law. The class action-styled case, which is entitled *Card v. Circuit City, Inc.*, is filed in the San Diego Superior Court, Case No. 37-2008-00095260.

1 Creditor Jonathan Card seeks to represent all California-based assistant managers who
2 were employed by Debtors and who were not paid overtime compensation, or provided
3 meal and rest breaks.

4 3. On January 13, 2009, pursuant to this Court's Order regarding creditor claims, Creditor
5 Jonathan Card - through his counsel - filed a timely creditor claim with the bankruptcy
6 administrator, Kurtzman Carson Consultants.

7 4. Debtors are in exclusive possession of the information necessary for Creditor Card to
8 value this claim in any more detail. Specifically, Debtors hold the payroll, employment
9 and time records, including the pay rates and number of weeks worked by Creditor Card
10 and the putative class 180 days prior to November 10, 2008 (the Petition Date).

11 5. Further, since Debtors' filing of its voluntary petition, the trial court proceedings of
12 Creditor Card have been stayed under Code of Civil Procedure section 916 and also
13 pursuant to the federal bankruptcy law "automatic stay" rules. Due to the automatic
14 stay, Creditor's counsel is prohibited from conducting discovery on any issues
15 (certification, merits or damages) against Debtors that would be necessary to further
16 evaluate Creditor Card's claim with more particularity.

17 6. Debtors' counsel has informed Creditor's counsel that this will be a "liquidating"
18 bankruptcy. In addition, Debtors' counsel informed Creditor Card that given Debtors'
19 limited financial resources, matters that would otherwise be returned to trial court(s) are
20 being kept in the Bankruptcy Court in order to curb the cost of litigating claims.

21 7. Debtors' Objection, which seeks to disallow the claims of Creditor Card and the
22 putative class, is improper. Creditor Card is prepared to respond in detail to any factual
23 or legal grounds that Debtor believes would tend to support disallowance of this claim,
24 yet without such information he is "shadow boxing" - unable to understand, let alone
25 respond to, contentions and arguments that have to date not been disclosed. With its
26 Objection, Debtors essentially seek to disallow Creditor Card's claims for reasons that
27 are completely unknown. The only basis for the objection is the unremarkable
28 conclusion that Debtor has decided the claims have no merit. This kind of ipse dixit

1 argument is as unsurprising as it is unhelpful to the Court's ability to make a fair
2 determination of the claim.

3 8. These claims arise under California law. Similar to federal law, wages have always
4 been afforded special status in California. The California Supreme Court has recently
5 explained the strong public policy supporting claims of this nature:
6

7 The public policy in favor of full and prompt payment of an employee's earned
8 wages is fundamental and well established: 'Delay of payment or loss of wages
9 results in deprivation of the necessities of life, suffering inability to meet just
10 obligations to others, and, in many cases may make the wage-earner a charge
11 upon the public.' (*Kerr's Catering Service v. Department of Industrial Relations*
12 (1962) 57 Cal.2d 319, 326) California has long regarded the timely payment of
13 employee wage claims as indispensable to the public welfare: "It has long been
14 recognized that wages are not ordinary debts, that they may be preferred over
15 other claims, and that, because of the economic position of the average worker
16 and, in particular, his dependence on wages for the necessities of life for himself
17 and his family, it is essential to the public welfare that he receive his pay when it
18 is due. [Citations.] An employer who knows that wages are due, has ability to
19 pay them, and still refuses to pay them, acts against good morals and fair
20 dealing, and necessarily intentionally does an act which prejudices the rights of
21 his employee." (*In re Trombley* (1948) 31 Cal.2d 801, 809-810; see *Gould v.*
22 *Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137 [statute
23 criminalizing prompt payment violations shows "the policy involves a broad
24 public interest, not merely the interest of the employee"].)

25 *Smith v. Superior Court* (2006) 39 Cal.4th 77, 82.

26 In another case, the California Supreme Court explained:

27 ///

1 Considerations of sound public policy buttress our conclusion. Labor
2 Code section 1194 confirms "a clear public policy ... that is
3 specifically directed at the enforcement of California's minimum wage
4 and overtime laws for the benefit of workers." (citation omitted) As
5 defendant's own authority reminds us, California's overtime laws are
6 remedial and are to be construed so as to promote employee
7 protection. (citation omitted.) And, as we have recognized, "this state
8 has a public policy which encourages the use of the class action
9 device." (citation omitted.) "By establishing a technique whereby the
10 claims of many individuals can be resolved at the same time, the class
11 suit both eliminates the possibility of repetitious litigation and
12 provides small claimants with a method of obtaining redress for
13 claims which would otherwise be too small to warrant individual
14 litigation."

15
16 *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319,
340.

- 17 9. This creditor is prepared to respond to any specific factual and/or legal arguments that
18 pertain to a fair determination of this claim.
19

20 Respectfully submitted,

21 Dated: September 2, 2009

22 **RIGHETTI LAW FIRM, P.C.**

23
24 

25 Matthew Righetti
26 Attorney for Creditor
27
28

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

-----X
In re: :
: Chapter 11
CIRCUIT CITY STORES, INC., et al. : Case No. 08-35654
: Jointly Administered with
Debtors : Case No. 08-35653
-----X

PROOF OF SERVICE

STATE OF CALIFORNIA

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the action. My business address is Righetti Law Firm, P.C., 456 Montgomery Street, Suite 1400, San Francisco, California, 94104.

On Wednesday, September 02, 2009 I served the foregoing document described as:

- **CREDITOR JOSEPH SKAF'S RESPONSE TO DEBTOR'S THRITY-FIRST OMNIBUS OBJECTION TO CLAIMS [DISALLOWANCE OF CERTAIN LEGAL CLAIMS]**
- **CREDITOR JONATHAN CARD'S RESPONSE TO DEBTOR'S THRITY-FIRST OMNIBUS OBJECTION TO CLAIMS [DISALLOWANCE OF CERTAIN LEGAL CLAIMS]**

on the interested parties by administering a true copy either by facsimile or in sealed envelopes addressed as follows:

Rex Darrell Berry
BERRY & BLOCK, LLP
2150 River Plaza Dr. Ste. 415
Sacramento, CA 95833
Fax: 916-564-2024
RBerry@berryblock.com

///

1 Ellen Lake
2 LAW OFFICES OF ELLEN LAKE
3 4230 Lakeshore Ave.
4 Oakland, CA 94610

5 Kelly L. Hensley
6 SHEPPARD, MULLIN, RICHTER AND HAMPTON
7 333 S. Hope Street, 48th Floor
8 Los Angeles, CA 90017

9 David R. Markham
10 R. Craig Clark
11 James M. Treglio
12 CLARK & MARKHAM, LLP
13 600 B Street, Suite 2130
14 San Diego, CA 92101

15 Kristin Major
16 Meredith Edelman
17 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
18 300 South Grand Avenue
19 Los Angeles, CA 90071
20 Fax: (213) 687-5600

21 Circuit City Stores, Inc., et al.
22 Claims Processing Department
23 KURTZMAN CARSON CONSULTANTS LLC
24 2335 Alaska Avenue
25 El Segundo, CA 90245

26 (X) VIA U.S. MAIL:

27 I am readily familiar with the firm's practice of collection and processing of
28 correspondence for mailing. Under that practice such envelopes would be deposited with
the U.S. postal service on Wednesday, September 02, 2009 with postage thereon fully
prepaid, at San Francisco, California.

Gregg M. Galardi
Ian S. Fredericks
SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP
One Rodney Square
PO Box 636
Wilmington, DE 19899

1 Chris Dickerson
2 SKADDEN, ARPS, SLATE, MEAGHER, & FLOM, LLP
3 333 West Wacker Dr.
4 Chicago, IL 60606

5 Sarah K. Baker
6 SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP
7 155 North Wacker Drive
8 Chicago, IL 60606

9 Dion W. Hayes
10 Douglas Foley
11 MCGUIREWOODS LLP
12 One James Center
13 901 E. Cary Street
14 Richmond, VA 23219

15 (X) **VIA OVERNIGHT MAIL:**

16 By delivering such documents to an overnight mail service or an authorized courier in an
17 envelope or package designated by the express service courier addressed to the persons on whom
18 it is to be served.

19 I declare under penalty of perjury under the laws of the State of California that the above
20 is true and correct and was executed on Wednesday, September 02, 2009, at San Francisco,
21 California.

22 
23 Brittany Gery



MEMORANDUM

Date: September 9, 2009

To: Court Clerk

From: Kurtzman Carson

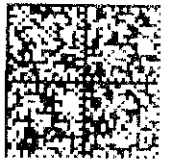
Re: Circuit City

Enclosed please find a Creditor Response to Debtor's Thirty-First Omnibus Objection to Claims that was sent to our office by mistake, to be filed with the court.

RIGHTT LAW FIRM

A PROFESSIONAL CORPORATION
456 MONTEGOMERY ST. • SUITE 1400 • SAN FRANCISCO • CA 94104

Circuit City Stores, Inc., et al.
Claims Processing Department
Kurtzman Carson Consultants, LLC
2335 Alaska Avenue
El Segundo, CA 90245



UNITED STATES POSTAGE
02 1P
\$001.22
0002191047 SEP 02 2009
MAILED FROM ZIP CODE 94104
PINEY BOWEN